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Rc: Response to Notification of Non-Compliant Appeal Brief for  
Appl. No.: 10/617,978 Confirmation No.: 4095  
Applicant(s): Herrmann *et al.*  
Filed: July 11, 2003  
Art Unit: 1638  
Examiner: Anne R. Kubelik  
Title: ISOLATED NUCLEIC ACID MOLECULES ENCODING ORALLY  
ACTIVE ANDROCTONUS AMOREUXI PESTICIDAL BIOPEPTIDES

Number of Pages (including cover page): 7

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,978	07/11/2003	Rafael Herrmann	035718/260673	4095

29122 7590 12/22/2006

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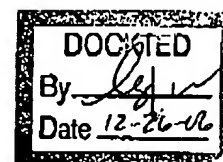
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ART UNIT PAPER NUMBER

DATE MAILED: 12/22/2006

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Please find below and/or attached an Office communication concerning this application or proceeding.



JAN 08 2007

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/617,978

Applicant(s)

HERRMANN ET AL

Examiner

KUBELIK, ANNE

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 15 November 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

Item 1. The appeal brief fails to contain heading X (Related Proceedings Appendix). This heading is required even when an item is not applicable. If there are no Related Proceedings being submitted, an indication of "none" should be under the heading.

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*Loenda Hood*  
LOREND A HOOD

PATENT APPEAL CENTER SPECIALIST

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Attorney's Docket No. 035718/260673

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/617,978 Confirmation No.: 4095  
Applicant(s): Herrmann *et al.*  
Filed: July 11, 2003  
Art Unit: 1638  
Examiner: Anne R. Kubelik  
Title: ISOLATED NUCLEIC ACID MOLECULES ENCODING ORALLY ACTIVE  
ANDROCTONUS AMOREUXI PESTICIDAL BIOPEPTIDES

Docket No.: 035718/260673  
Customer No.: 29122

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**RESPONSE TO NOTIFICATION OF NON-COMPLIANT**  
**APPEAL BRIEF UNDER 37 CFR § 41.37**

Responsive to the Notification of Non-Compliant Appeal Brief issued December 22, 2006 (copy attached), and in accordance with a telephone conversation with Dale Shaw of the Board of Patent Appeals and Interferences (571-272-9797) on January 8, 2007, Applicants herewith submit the following amended pages or sections to the Appeal Brief filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed September 26, 2006:

1. Substitute Page 16, listing Item No. 11: Related Proceedings Appendix. An indication of "None" is reflected under this heading.
2. A separate Related Proceedings Appendix with "None" indicated at the bottom of the page.

LEGAL02/30216735v1

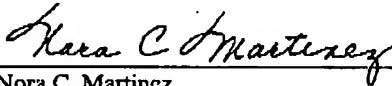
In re: Herrmann *et al.*  
Appl. No.: 10/617,978  
Filing Date: July 11, 2003

Applicants believe the Appeal Brief is now in compliance with the requirements set forth in 37 CFR § 41.37.

Respectfully submitted,



David E. Cash  
Registration No. 52,706

<b>CUSTOMER NO. 29122</b> <b>ALSTON &amp; BIRD LLP</b> Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	<b>CERTIFICATION OF FACSIMILE TRANSMISSION</b>  I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at facsimile number 571-273-8300 on the date shown below.   Nora C. Martincz  1/8/2007 Date
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In re: Herrmann *et al.*  
Appl. No.: 10/617,978  
Filing Date: July 11, 2003

determine whether modified sequences would encode proteins that retain activity. Consequently, contrary to the conclusions stated in the Office Action, the quantity of experimentation necessary and the amount of guidance presented in the specification is sufficient to enable the claims. Accordingly, the rejection of claims 1-7, 13-19, 21-26, 30, 31, 38, 40, and 42 under 35 U.S.C. §112, first paragraph, for lack of enablement should be withdrawn.

9. ***Claims Appendix***

An appendix containing a copy of the claims involved in the appeal.

10. ***Evidence Appendix***

An appendix containing copies of the evidence submitted as follows:

Evidence Appendix A – Lazar *et al.* (1988)

Evidence Appendix B – Hill *et al.* (1998)

11. ***Related Proceedings Appendix***

None.

## **RELATED PROCEEDINGS APPENDIX**

**NONE**

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